

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANA BECKHORN,

Plaintiff,

v.

18-CV-1452
DECISION AND ORDER

NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION, ET AL.,

Defendants.

On December 12, 2018, the plaintiff commenced this action alleging violations of the Americans with Disabilities Act and the Rehabilitation Act. Docket Item 1. On June 24, 2019, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 22.

On June 21, 2019, the defendants moved to dismiss, Docket Item 21; on July 22, 2019, the plaintiff responded, Docket Item 26; and on July 29, 2019, the defendants replied, Docket Item 27. On October 10, 2019, Judge McCarthy issued a Report and Recommendation (“R&R”) finding that the defendants’ motion to dismiss should be granted as to defendants Acting Commissioner Anthony J. Annucci and Deputy Commissioner Jeffrey McKoy but should be otherwise denied. Docket Item 28. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court

must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to grant in part and deny in part the defendants' motion.

For the reasons stated above and in the R&R, the defendants' motion to dismiss, Docket Item 21, is GRANTED IN PART AND DENIED IN PART, and the claims against defendants Annucci and McKoy are DISMISSED. The case is referred back to Judge McCarthy for further proceedings consistent with the referral order of June 24, 2019, Docket Item 22.

SO ORDERED.

Dated: October 30, 2019
Buffalo, New York

s/ Lawrence J. Vilardo

LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE